

# OSTER

## Researching Services

12897 Colonial Dr • Mt Airy, Md 21771  
301-253-6040

17049  
0-277A0010CT 4 1990-9 40 AM  
INTERSTATE COMMERCE COMMISSION

OCT 4 9 36 AM '90

October 4, 1990

Ms. Mildred Lee  
Recordations Unit  
Interstate Commerce Commission  
12th & Constitution Avenue, N.W.  
Washington, D.C. 20423

Dear Ms. Lee:

Enclosed is an Interim User Agreement dated September 5, 1990, between the following parties:

Lessor: General Motors Corporation,  
Electro-Motive Division  
LaGrange, IL 60525

Lessee: National Railroad Passenger  
Corporation (Amtrak)  
2000 Market Street  
Philadelphia, PA 19103

The equipment involved in this transaction is as follows:

Equipment: 2, F69HP 3000 HP Locomotives  
#450, 451

Please file this agreement as a primary document. The filing fee of \$15 is enclosed. Thank you.

Sincerely,

*Mary A Oster*

Mary Ann Oster  
Research Consultant

Enclosures

*Patricia J. Ward*  
*C. J. Ward*

17049  
REGISTRATION NO. FILED 1425  
OCT 4 1990 - 9 40 AM  
INTERSTATE COMMERCE COMMISSION

INTERIM USER AGREEMENT

Dated as of September 5, 1990

Between

GENERAL MOTORS CORPORATION (ELECTRO-MOTIVE DIVISION),

AND

NATIONAL RAILROAD PASSENGER CORPORATION

covering

Two (2) F69PH, 3,000 Horsepower Locomotives

THIS AGREEMENT, dated as of September 5, 1990, between GENERAL MOTORS CORPORATION (ELECTRO-MOTIVE DIVISION), a Delaware corporation ("Lessor") and NATIONAL RAILROAD PASSENGER CORPORATION (AMTRAK), (Lessee) a corporation organized under the Rail Passenger Service Act and the laws of the District of Columbia.

WITNESSETH:

WHEREAS, Lessor and Lessee entered into a Purchase Order dated September 29, 1987 as amended ("Purchase Agreement") incorporated herein and hereby made part hereof, pursuant to which the Lessor has agreed to construct and sell to Lessee or to a third party designated by Lessee ("Purchaser") and Lessee has agreed to purchase or arrange for the purchase of two (2) F69PH, 3,000 H.P. diesel electric locomotives, bearing road numbers 450 and 451, ("Locomotives"); and

WHEREAS, Lessee desires to have temporary custody, possession and use of the Locomotives as soon as each is available for delivery, solely as a Lessee, and the Lessor is willing to grant such temporary custody, possession and use to Lessee;

NOW THEREFORE, in consideration of the premises, Lessor hereby delivers to Lessee and Lessee accepts from the Lessor the Locomotives as of the date each of them is delivered at Rockville, MD until payment in full is effected pursuant to the Purchase Agreement for all of the Locomotives upon the terms and conditions detailed below.

1. Upon delivery to Lessee of each Locomotive in a condition satisfactory to Lessee, a Lessee representative shall execute a Certificate of Inspection acknowledging the receipt thereof hereunder. Title to each Locomotive shall remain in the Lessor and Lessee's rights and interests therein are and shall be solely that of possession, custody and use as Lessee hereunder. Transfer of title to the Locomotives to Purchaser and the termination of this Agreement shall be effected only at the time of delivery of bills of sale for the Locomotives by Lessor to Purchaser, such bills of sale to be furnished upon at least ten (10) days prior written notice by Lessee to Lessor. Lessee shall do such acts as may be reasonably requested by the Lessor, for the protection of its title to and interest in the Locomotives during the term of the Agreement, including, but not limited to assisting Lessor in connection with any filing with the Interstate Commerce Commission.
2. The "Term" of this Agreement is defined as 60 Running Days from the execution date of the Certificate of Inspection. A "Running Day" is any day a locomotive is not out-of-service due to manufacturing defects or repairs thereof. The Lessor shall promptly repair all defects to minimize the number of out-of-service days.
3. On or before the expiration of this Lease, Lessee shall pay or cause a designated third party to pay the Lessor the purchase price of the Locomotives stated in the Purchase Agreement (the "Purchase Price") upon receipt of an invoice and bill of sale for each, pursuant to paragraph 1 hereof at which time this Agreement will terminate. Until payment is

effected, Lessee shall pay interim per diem rent on each locomotive equal to the Purchasing Price thereof, multiplied by the Prime Rate of Interest published in the Wall Street Journal (or the average of such rates, if more than one), for such day, divided by 365 provided, however, that the first thirty (30) Running Days shall be rent free. In no event, however, shall Lessee retain use of the Locomotive under this Agreement beyond the "Term" hereof, unless the parties otherwise agree in writing.

4. Lessee agrees that it (a) will use and permit third parties to use the locomotives only in the continental United States, (b) shall permit no liens of any kind to attach to the Locomotives and (c) will indemnify and save harmless the Lessor from any and all claims, expenses or liabilities of whatsoever kind, including but not limited to any liability for personal injury or property damage and any and all taxes, fines, charges and penalties that may accrue or be assessed or imposed upon the Locomotives or the Lessor solely as a result of the Lessor's ownership or because of the use, operation, management or handling of the Locomotives by Lessee during the term of this Agreement. Notwithstanding the above, Lessee shall not be required to indemnify Lessor for any claims, expenses, or liabilities resulting from Lessor's negligence or willful acts or from a defect in the Locomotives and Lessor agrees to indemnify Lessee against any loss or damage attributable solely to the negligence of Lessor or defects in the equipment. Lessee and Lessor obligations contained in this paragraph shall survive the termination of this Agreement.
5. Lessee will, at its own expense, subject to Warranty Adjustments, keep and maintain the Locomotives in good order and running condition and shall, at its option, replace or repair any component or part of any Locomotive damaged or destroyed by any cause with the exception of manufacturing defects during the term hereof or promptly pay to the Lessor the Purchase Price of any Locomotive which may in the opinion of Lessee be damaged beyond economic repair or destroyed by any cause except manufacturing defects during the term hereof.
6. In the event Lessee or a designated third party fails to pay the Purchase Price plus any interim rent due hereunder by November 4, 1990, then Lessor may, by its agents, enter upon the premises of Lessee and take possession of all or any such Locomotives as may be present and thenceforth hold and possess same free from any right of Lessee, or its successors or assigns, to use the Locomotives for any purposes whatsoever. Lessor may upon ten days written notice to Lessee at a public sale or after invitation to Lessee at a private sale thereafter sell and deliver the Locomotives to others upon such terms as Lessor, at its sole discretion may determine it being understood and agreed that Lessee shall be liable to Lessor for the amount by which the price paid by such other parties is less than the sum of the Purchase Price, interim rent due hereunder and all reasonable expenses incident to such sale, including but not limited to the cost of obtaining the Locomotives, providing for their safekeeping, and selling them. Lessee shall pay all such amounts upon demand by Lessor.

7. Lessee represents and warrants that:

- a. The execution and delivery of this agreement is within its corporate proceedings and will not contravene any provision of its charter or by-laws;
- b. The rights of Lessor as herein set forth and the title of Lessor to the Locomotives are senior to the lien of any mortgage, security agreement or other instrument binding upon Lessee;
- c. Notices in connection with this Agreement shall be in writing and delivered either in person or by certified mail to the parties at the addresses listed below their signature to this Agreement. Such notices shall be effective upon receipt.

Send Notices To:

(Customer Name & Address)

JOHN PAWK

SENIOR DIRECTOR PURCHASING

AMTRAK

2000 MARKET ST.

PHILADELPHIA, PA 19103

Send Notices To:

Keith McCanless

Manager of Leasing & Finance

Electro-Motive Division

LaGrange, Illinois 60525

(708) 387-6235

THIS AGREEMENT shall be governed by and construed in accordance with the laws of the District of Columbia.

Attest:

By:

Joseph Sousa

Attest:

By:

[Signature]

NATIONAL RAILROAD PASSENGER CORPORATION

By:

[Signature]

Its:

SENIOR DIRECTOR PURCHASING

GENERAL MOTORS LOCOMOTIVE GROUP  
ELECTRO-MOTIVE DIVISION

By:

[Signature]

Its:

Asst. Divisional Comptroller

State of PENNSYLVANIA )  
City of PHILADELPHIA ) ss:

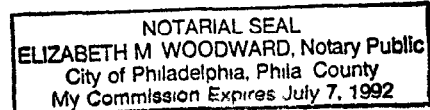
On this 13TH day of SEPTEMBER, 1990, before me personally  
appeared JOHN A. PAWIK, to me personally known, who, being by me  
duly sworn, says that he is SR DIR PURCHASING of AMTRAK,  
(Customer Name)

that the foregoing instrument was executed on behalf of said Corporation by  
authority of its Board of Directors, and he acknowledged that the execution of  
the foregoing instrument was the free act and deed of said Corporation.

(Notarial Seal)

Elizabeth M. Woodward  
Notary Public

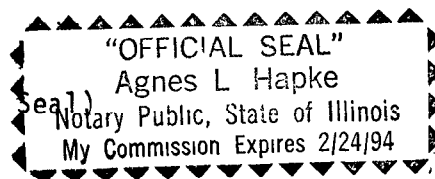
My Commission expires:



State of Illinois )  
City of LaGrange ) ss:

On this 14th day of September, 1990, before me personally  
appeared Will Werner, to me personally known, who, being by me duly  
sworn, says that he is a Asst Controller of GENERAL MOTORS LOCOMOTIVE  
GROUP (ELECTRO-MOTIVE DIVISION), that the foregoing instrument was executed on  
behalf of said Corporation by authority of its Board of Directors, and he  
acknowledged that the execution of the foregoing instrument was the free act  
and deed of said Corporation.

(Notarial Seal)



Agnes L. Hapke  
Notary Public

My Commission expires: Feb 24, 1994